

OGC HAS REVIEWED.

Disclosure of OSS Information on  
Termination of Employment

50 U. S. C. 30, 32, 34:

Prohibits divulging<sup>ing</sup> to foreign Governments of information relating to national defense intending advantage to that Government, or injury to the United States.

41 U. S. C. (Note preceding Section 1)

Punishes one who lets an alien see plans.

50 U. S. C. 45(b):

Prohibits publication of photographs without the permission of CO.

22 U. S. C. 135:

Prohibits willful, unauthorized publication of any diplomatic code or any matter prepared in code.

18 U. S. C. 98:

Prohibits use of papers designed to violate statutes or rights and obligations of United States under treaty or law of nations.

18 U. S. C. 214: (Agriculture):

Punishes any employee or officer who by virtue of his office gains information which is required to be withheld from publication and publishes same.

8 U. S. C. 457:

35 U. S. C. 42:

Enables the Commissioner of Patents to withhold as secret any invention as long as he deems necessary in the national interest.

18 U. S. C. 72-74, 234:

46 U.S.C. 710(a):

Prohibits the use of any document published by the Bureau of Navigation.

18 U.S.C. 343-5:

47 U.S.C. 605:

(Check Archives Statute for language allowing certain documents to remain classified.)

In "The Peace Negotiations" by Robert Lansing, the author anticipated criticism for including information gained through his confidential position, but he felt justified in revealing this, because of the implications reflecting on his loyalty and integrity. Herbert Yardley, in publishing "The American Black Chamber" revealed many items of information which should have been secret. There is no justification made for this, except that in his judgment, since the office about which he wrote had been discontinued, he was at full liberty to write about its operations. His information was so extraordinary, I checked the table of cases to see whether he had been prosecuted. I found nothing.

22 U. S. C. 126:

Prohibits foreign service officers from corresponding with private persons concerning public affairs.

Gorin vs U. S. 111 F<sup>2</sup>-712:

This was a case involving a violation of 50 U.S.C. 31-32, where it was said that "national defense" was used in the broad sense and was not to be limited to matters relating to vessels, aircraft, etc. Whether national defense was involved was a fact question for the jury. It was pointed out that the head of Naval Intelligence in San Diego had instructed the appellant against disclosure of any information learned in the course of his employment. This was held pertinent to the question of the appellant's "reason to believe". The court did not dwell on the fact that the very reports in question had to be made part of the public record and submitted in evidence. The court said this was necessary to the prosecution of the case and the soundness of this procedure was for Congressional attention.

31 Columbia 1148:

28 California Law Review 733:

23 Yale 559:

35 Harvard 9:

32 Harvard 417, 932:

17 Michigan Law Review 621:

17 Tennessee Law Review 706 (Roscoe Pound's article):

21 Georgetown 35, 161:

249 U. S. 211, 204, 47:

The Holmes test as laid down in the Schenk case (249 U.S. 47) is "whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." (See 250 U. S. 616, (33 Harvard 747; 35 Harvard 9), 251 U. S. 466, 252 U. S. 239).

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Mr. Justice Brandeis in *Whitney v. California*, 274 U.S. 357, (1927) said: "Only an emergency can justify repressions. Such must be the rule, if authority is to be reconciled with freedom."

- 1) Census is secret to enlist the public confidence w/o which census must fail - 46 Stat. 25
- 2) no tax info that it "might be a source of annoyance, embarrassment or injury to the taxpayer" <sup>RS 3167</sup> 18 USC 216.
- 3) 40 Stat. 494 + 8 Apr 30 1911
- 4) 38 Stat. 378 - duty to keep info secure document (agreedly act)
- 5) 26 F Supp 582 (1939) [*Pallen v. Ford Motor Co.* ?]